



## Judge knocks down \$1 and \$3 Medicaid co-pays

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The state Medicaid program cannot charge co-pays for prescription drugs unless the General Assembly changes the law, a Superior Court judge ruled yesterday. That means that, at least for now, some 14,000 poor people will not have to pay the \$1 co-pay for generics and the \$3 co-pay for brand-name drugs that the state wanted to collect starting Sept. 21.

But the state is considering appealing the decision — and will also ask the Assembly to change the law when it returns in January — in the hope that Medicaid can collect payments expected to total about \$60,000 a month.

The ruling by Superior Court Judge Stephen J. Fortunato applies to a subset of people covered by the state health program, mostly disabled adults who are not eligible for Medicare, a federal program. It has no effect on people enrolled in RItE Care, a state managed-care program for low-income families, nor does it have any bearing on the federal Medicare Part D drug benefit.

On Sept. 20, Fortunato issued a temporary restraining order barring the state from putting the co-pays in effect until he gave the matter further consideration. At issue was the decision-making process. The co-pays were approved as part of the state budget. But Rhode Island Legal Services, which brought suit on behalf of a homebound disabled woman from Central Falls, argued that the state needed to amend the statute governing Medicaid before it could impose co-pays.

That law does not mention co-pays in connection with drug coverage, but does require co-pays for other services, said Gretchen Bath, legal services attorney. Yesterday, according to Bath, Fortunato agreed with that argument and threw out the regulations imposing the co-pays.

Ronald A. Lebel, director of the state Department of Human Services, said he would discuss appealing the decision with the department's lawyers. He said the co-pays resulted from a "clear directive" from the Assembly, which heard testimony and agreed with the governor's proposal to save money in that way. "There was consensus that the State of Rhode Island should do this," Lebel said. Lebel said that as soon as the Assembly session begins in January, he will ask for money in the supplemental budget to cover the \$60,000-a-month loss as well as a change in the law.

Although the Assembly could vote to impose the co-pays, at least the process will allow for greater public scrutiny and debate, Bath said. "People can come out and comment about the impact of making people pay co-pays for drugs their doctors prescribe," Bath said. She said many people in this program have so little income that even \$1 and \$3 co-pays are a serious hardship.